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IN THE

Supreme Court of the United States

OCTOBER TERM 1952

No. 464 Miscellaneous Docket

LOIS T. SCHOLLA as Next Friend of her son Paul Frederick Scholla, Jr., and her daughter Barbara Jean Scholla, minors, *Petitioner,*

v.

PAUL F. SCHOLLA, *Respondent.*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the District of Columbia has not been published in a reporter at this date. The opinion of the United States District Court for the District of Columbia is not reported.

JURISDICTION

The opinion of the United States Circuit Court of Appeals for the District of Columbia was entered on January

8, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether the courts of one jurisdiction have the power to adjudicate cases involving prospective rights of domiciliaries of another jurisdiction, non-resident within its confines.

STATEMENT

The statement contained in the brief in support of the petition is substantially correct.

It should be noted, however, that the amount of the claimed overdue installments under the Florida divorce decree is $500.

ARGUMENT

The parents in this case were validly divorced outside of the District of Columbia. The Florida court which granted the divorce awarded custody of the children to the mother. The validity of the Florida decree is not questioned. The father is a resident of the District of Columbia. The children and their legal custodian are nondomiciliaries thereof resident in Virginia. This action was initiated subsequent to the Florida divorce.

Petitioner asserts that her action is one for maintenance of the children and is maintainable under Section 11-306, D. C. Code, because the father is a resident of the District of Columbia. *Schneider* v. *Schneider*, 78 U.S. App. D.C. 383, 141 F. 2d 542, indicates that domicile or residence of the child within the District of Columbia is a requisite element of such an action. There are no reported cases to the contrary. Therefore that ruling would seem to be binding on this Court. *Estin* v. *Estin*, 334 U.S. 541.

A study of the domestic relations cases cited by petitioner in her brief, as well as those cited by the lower court in its opinion, including *Schneider* v. *Schneider*,

supra, will show that in each case in which an order for custody or maintenance or any other prospective relief for a child is granted and the question of jurisdiction raised, the court's judgment awarding relief is bottomed upon a plainly stated finding that it has jurisdiction over the person of the child.

The *Guercia case* (239 S.W. 2d 169; Tex. Civ. App.) cited by petitioner is not in point. In that case prospective relief was not sought.

The compensation case cited by petitioner (*Industrial Commission* v. *McCartin*, 330 U.S. 622) likewise seems beside the point.

The Court below correctly held that the $500 debt claim was without the jurisdiction of the trial court. *Klepinger* v. *Rhodes*, 322 U.S. 734.

Insofar as the case at bar may be considered as having been bottomed upon a foreign divorce decree, there is no conflict in the holding of the Court below that the pecuniary provisions of divorce decrees of one jurisdiction are not prospectively enforceable in another jurisdiction. *Worsley* v. *Worsley*, 249 U.S. 725. *Yarborough* v. *Yarborough*, 290 U.S. 202.

In brief, petitioner maintains that one jurisdiction should be burdened with securing the maintenance of citizens of another jurisdiction non-resident within its borders. There is no authority for such a proposition.

The relief petitioner seeks can probably be provided by legislation, but it is beyond the judicial power to grant it.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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